

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Richmond Division**

UNITED STATES OF AMERICA)	
)	
v.)	Criminal No. 3:07cr194–HEH
)	
JOSEPH N. WRIGHT,)	
)	
Petitioner.)	

**MEMORANDUM OPINION
(Accepting Report and Recommendation
and Denying 28 U.S.C. § 2255 Motion)**

Joseph N. Wright has filed this motion pursuant to 28 U.S.C. § 2255 wherein he claims he was entitled to relief upon the following grounds:

Claim One Trial counsel rendered ineffective assistance by failing to inform Wright, before he pleaded guilty, that his offense level could be adjusted upward because Wright shot his firearm into a vehicle.

Claim Two Trial counsel rendered ineffective assistance by failing to file a notice of appeal.

By Memorandum Opinion and Order entered on December 9, 2010, the Court dismissed Claim One and referred Claim Two to the Magistrate Judge to conduct an evidentiary hearing.

The Magistrate Judge conducted an evidentiary hearing. On November 9, 2011, the Magistrate Judge issued a Report and Recommendation wherein she recommended that the Court dismiss Claim Two. In the Report and Recommendation the Magistrate Judge advised Wright that he had fourteen days in which to file specific written objections to the Report and Recommendation. The Magistrate Judge warned Wright

that failure to file specific objections in a timely manner could result in an Order dismissing the § 2255 Motion. More than fourteen days have elapsed since the entry of the November 9, 2011 Order and Wright has not filed objections to the Report and Recommendation. Accordingly, the Report and Recommendation will be accepted and adopted. Claim Two will be dismissed. The 28 U.S.C. § 2255 Motion will be denied. The action will be dismissed.

An appeal may not be taken from the final order in a § 2255 proceeding unless a judge issues a certificate of appealability (“COA”). 28 U.S.C. § 2253(c)(1)(B). A COA will not issue unless a prisoner makes “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). This requirement is satisfied only when “reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were ‘adequate to deserve encouragement to proceed further.’” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (quoting *Barefoot v. Estelle*, 463 U.S. 880, 893 n.4 (1983)). For the reasons stated more fully in the Report and Recommendation, no law or evidence suggests that Wright is entitled to further consideration in this matter. A certificate of appealability is therefore denied.

An appropriate Order shall accompany this Memorandum Opinion.



/s/

HENRY E. HUDSON
UNITED STATES DISTRICT JUDGE

Date: Dec 9, 2011
Richmond, Virginia